IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 10 of 1990
with
WEALTH TAX REFERENCE No 13 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF WEALTH-TAX
Versus
(M) VANDNA SURESH SHAH

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Appearance:
1. WEALTH TAX REFERENCE No. 10 of 1990
MR BB NAIK for Petitioner No. 1
MR JP SHAH for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 11/07/2002

COMMON ORAL JUDGEMENT
(Per : MR.JUSTICE M.S.SHAH)

In these References at the instance of the Revenue, the following common question of law is referred for our opinion for the assessment years 1980-81 and 1981-82:-

> Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to the exemption u/s.5(1)(xxxii) of the W.T. Act, 1957?"

2. The respondent - assessees are individual sisters and are beneficiaries in the family trust created by their father, known as Shri Suresh Amichand Shah Family Trust. During the relevant accounting period, the family trust carried on business of purchasing cloth, processing it and then manufacturing it through other weaver processors at their own risks.

3. For the assessment years under consideration, the assessees filed their wealth tax returns. During the assessment proceedings, the respondent- assessees claimed exemption under Section 5 (1)(xxxii) of the Wealth-tax Act, 1957 in respect of their respective shares of capitals in the said family trust. The Wealth-tax Officer rejected such claim for both the years for both the assessees. However, the Appellate Assistant Commissioner upheld the claim of the assessees and held that the respondent - assessees were entitled to claim exemption under Section 5(1)(xxxii) of the Act. The Tribunal confirmed that decision in appeal in case of both the assessees. Hence, these separate references in case of the respondent - assessees.

4. We have heard Mr BB Naik, learned counsel for the applicant - revenue. Though served, none appears for the respondent - assessees.

5. At the hearing of the References, our attention is invited to the decisions of this Court in Commissioner of Wealth-tax vs. Mohinibai Kanaiyalal (1999) 240 ITR 636 and in W.T.R. No.7 of 1990 decided on 4-7-2002, wherein this Court had an occasion to consider the similar question.

6. Following the aforesaid decisions and the findings given that the assessees were getting the cloth processed and manufactured through other processors weavers, the matter is covered by the aforesaid decisions of this Court against the assessees.

Accordingly, our answer to the question in each of these references is in the negative i.e. in favour of the revenue and against the assessee.

7. Both the references accordingly stand disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-